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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
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10/067,174

02/04/2002

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32204

4911

7590

06/23/2004

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EXAMINER

HARTMANN, GARY S

ART UNIT

PAPER NUMBER

3671

DATE MAILED: 06/23/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/067,174

Applicant(s)

KNAK ET AL.

Examiner

Gary Hartmann

Art Unit

3671

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 13 April 2004.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-12 and 21-32 is/are pending in the application.
- 4a) Of the above claim(s) 21-32 is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-12 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 04 February 2002 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
 - ☐ Certified copies of the priority documents have been received in Application No. _____.
 - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

DETAILED ACTION

Election/Restrictions

Newly submitted claims 27-32 are directed to an invention that is independent or distinct from the invention originally claimed for the following reasons: the newly submitted claims recite limitations not essential, but patentably distinct from the originally claimed apparatus.

Since applicant has received an action on the merits for the originally presented invention, this invention has been constructively elected by original presentation for prosecution on the merits. Accordingly, claims 27-32 withdrawn from consideration as being directed to a non-elected invention. See 37 CFR 1.142(b) and MPEP § 821.03.

This application contains claims 21-32 drawn to an invention nonelected with traverse in the response filed April 13, 2004. A complete reply to the final rejection must include cancellation of nonelected claims or other appropriate action (37 CFR 1.144) See MPEP § 821.01.

Claim Objections

Claim 1 is objected to because of the following informalities: "the tread bars" (line 10) should be --at least one tread bar-- in order to properly correspond with the recitation of line 7. Appropriate correction is required.

Claim Rejections - 35 USC § 103

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

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(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 1-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Spiess et al. (U.S. Patent 5,340,232).

Spiess et al. discloses a drainage system grate assembly including a frame (1) set within and surrounding a watercourse (manhole). There is a grate (3) set within the frame (Figure 1a, for example). The grate has tread bars (not labeled, vertical bars of grate 3 in Figure 1a) and crossbars (shown in cross section in Figures 2a-2c). There is a flange (9) protruding substantially horizontally from a crossbar adjacent a lower-most surface thereof (Figure 2a, for example). There is a locking element (7) secured to the flange (9) and contacting the frame (1) in order to secure the grate within the frame (Figure 1b, for example). The crossbars span the watercourse, but are not necessarily supporting the tread bars. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have added an additional tread bar in between the two existing tread bars in order to increase safety of the grate assembly, as is known in the art (for example, in order to prevent narrow tires from becoming wedged between the crossbars). This configuration would result in an apparatus meeting claim recitations.

The frame includes ledges and downwardly extending shelves (Figure 2a, for example).

Regarding claim 4, Spiess et al. teaches an integral configuration, rather than channels. Using a multi-piece construction of the cross bars and tread bars would have necessitated using channels in order to obtain the smooth upper surface of Spiess et al. Note that making a structure from separable pieces is not patentably distinguishable from an integrally formed apparatus.

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Regarding claim 5, given the configuration described in claim 4, it would have been obvious to one of ordinary skill in the art at the time the invention was made to have configured Spiess et al. in the manner claimed in order to obtain the smooth upper surface shown by Spiess et al.

There is a slanted side adjacent the flange (below the horizontal surface of the flange, Figure 2a, for example).

The upper-most surface of the grate does not extend substantially above the upper-most surface of the frame (Figure 2a, for example).

There is a substantially vertical sidewall (above the flange, Figure 2a, for example) which is adjacent the slanted side, wherein both the sidewall and the slanted side are opposite (i.e., on top of and below) the flange.

Spiess et al. does not teach a bolt or a nut retainer; however, a bolt or nut retainer could be attached through flange (7) of the locking element and into flange (9) of the cross bar. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have used this configuration in order to further secure the apparatus. Note that given this configuration, process limitations of claims 9 and 10 could be met.

The locking element (7) meets the recitation of a flat bar.

Response to Arguments

Applicant's arguments with respect to claims 1-12 have been considered but are moot in view of the new ground(s) of rejection.

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Conclusion

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a).

Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gary Hartmann whose telephone number is 703-305-4549. The examiner can normally be reached on Monday through Friday, 9am-6pm.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thomas Will can be reached on 703-308-3870. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

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Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



Gary Hartmann
Primary Examiner
Art Unit 3671

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